

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOHN QUINTERO,

Plaintiff,

v.

CHARLES DANIELS,

Defendant.

Case No. 3:21-cv-00504-MMD-CLB

ORDER

Plaintiff John Quintero brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Northern Nevada Correctional Center. (ECF No. 1-1.) On December 9, 2022, this Court ordered Quintero to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before February 7, 2022. (ECF No. 3.) The Court warned Quintero that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 3.) That deadline expired and Quintero did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in

1 expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk
2 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
3 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine*
4 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal*
5 *Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

6 The first two factors, the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing its docket, weigh in favor of dismissal of John
8 Quintero's claims. The third factor, risk of prejudice to defendants, also weighs in favor of
9 dismissal because a presumption of injury arises from the occurrence of unreasonable
10 delay in filing a pleading ordered by the court or prosecuting an action. *See Anderson v.*
11 *Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring
12 disposition of cases on their merits—is greatly outweighed by the factors favoring
13 dismissal.

14 The fifth factor requires the Court to consider whether less drastic alternatives can
15 be used to correct the party's failure that brought about the Court's need to consider
16 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
17 that considering less drastic alternatives *before* the party has disobeyed a court order
18 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
19 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
20 “implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court's
21 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
22 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
23 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
24 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
25 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
26 unless Quintero either files a fully complete application to proceed *in forma pauperis* or
27 pays the \$402 filing fee for a civil action, the only alternative is to enter a second order
28 setting another deadline. But the reality of repeating an ignored order is that it often only

1 delays the inevitable and squanders the Court's finite resources. The circumstances here
2 do not indicate that this case will be an exception—there is no hint that Quintero needs
3 additional time or evidence that he did not receive the Court's order. Setting another
4 deadline is not a meaningful alternative given these circumstances. So the fifth factor
5 likewise favors dismissal. In sum, the Court finds that these dismissal factors weigh in
6 favor of dismissal.

7 It is therefore ordered that this action is dismissed without prejudice based on
8 Quintero's failure to file a fully complete application to proceed *in forma pauperis* or pay
9 the full \$402 filing fee in compliance with this Court's December 9, 2021, order.

10 The Clerk of Court is directed to enter judgment accordingly and close this case.
11 No other documents may be filed in this now-closed case. If Quintero wishes to pursue
12 his claims, he must file a complaint in a new case.

13 DATED THIS 22nd Day of February 2022.

14
15 
16 _____
17 MIRANDA M. DU
18 CHIEF UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28